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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

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Analysis of Enrolled House Bill 6213

Topic: Minimum Wage and Overtime Exclusions

Sponsor: Representative Huizenga

Co-Sponsors: Representatives Wenke, Schuitmaker, Booher, Hansen, Sheen, Drolet, Hildenbrand, Robertson, Emmons, Proos, Pearce, Steil, Green, Jones, Walker, Newell, Gosselin, Amos, VanRegenmorter, Gaffney, Hune, Stakoe, Stewart, Vander Veen, Elsenheimer, Ward, Hummel, Palsrok, Hoogendyk, Shaffer, Palmer, Kooiman, Pastor, Moolenaar, Stahl, Caswell, Garfield, LaJoy, Marleau, Acciavatti, Brandenburg, Taub, Meyer, DeRoche, Nitz, Ball, Baxter, Mortimer and Pavlov

Committee: House Commerce Committee
Senate Commerce and Labor

Date Introduced: June 15, 2006

Date Enrolled: June 27, 2006

Date of Analysis: September 6, 2006

Position: The Department of Labor & Economic Growth does not oppose the bill.

Problem/Background: Public Act 81 of 2006 amended the Minimum Wage Law to provide for an increase in the state minimum wage. The recently enacted provisions provide for an increase from \$5.15 per hour to \$6.95 per hour effective October 1, 2006; \$7.15 per hour effective July 1, 2007 and \$7.40 per hour effective July 1, 2008. Section 14 of the state Minimum Wage Law provides that the state law does not apply to employers who are subject to the minimum wage provisions of the federal Fair Labor Standards Act (FLSA) of 1938 unless the federal provisions would result in a lower minimum wage than under the state law, which will be the case beginning October 1, 2006. As a result of this language, it is believed that overtime exemptions that exist in federal law will not apply to those employees, and those employees previously covered by the federal exemptions now fall under the state overtime provisions, which require payment of overtime to them of at least one and one half times the regular hourly rate.

Description of Bill: The bill amends Section 14 of the Minimum Wage Law of 1964 to provide that employers who are currently subject to the minimum wage provisions of the federal FLSA are exempt from the overtime provisions of Section 4a of the Michigan Minimum Wage Law. There is also a provision that the act does not apply to an employee who is exempt from the minimum wage requirements of the FLSA. The bill contains language specifically subjecting employees in certain domestic service and child care employment to the minimum wage and overtime compensation provisions of Michigan's law. There is also a provision clarifying that

the new language in the bill does not deprive an employee of any right to overtime compensation that existed before the provisions went into effect. The bills are tie-barred to Senate Bill 453 (Earned Income Tax Credit) and Senate Bill 1364 (Youth Minimum Wage).

Summary of Arguments

Pro: Some would argue that House Bill 6213 simply returns the overtime provisions to the status quo under current law, and that without the provisions of House Bill 6213, those professions that are federally exempt from overtime laws might no longer be exempt resulting in their employers having to pay them time and a half for time worked over 40 hours a week. Employers in these industries testified at both House and Senate committee meetings that they would be forced to decrease the number of hours an employee would be allowed to work or would have to lay off workers to compensate for the increase in overtime costs. Some employees in these excluded professions testified at House and Senate committee meetings that they would not be able to support their families if they were limited to working only 40 hours a week.

Con: Some would argue that overtime is an important part of the economic security for Michigan families and that House Bill 6213 is an attempt to take away hard-earned overtime pay from Michigan workers. Those in opposition to this bill believe that it goes beyond returning overtime provisions to the status quo in that it expands the number of individuals who would not receive the minimum wage increase beginning October 1, 2006.

The bill appears to expand the number of individuals who would not be covered under the state Minimum Wage Law by including all exceptions in Section 14 of the FLSA rather than the current exemption of only those covered in Section 14(c) of the FLSA. This language could be interpreted to mean that learners, apprentices, students, and handicapped workers, all of whom are covered by Section 14 of the FLSA, are no longer subject to the state minimum hourly wage. This provision also appears to conflict with Section 7 of Michigan's law, which permits the department director to establish a suitable scale of rates for apprentices, learners, and persons with disabilities.

The provision in the bill that Michigan's law does not apply to an employee who is exempt from the minimum wage requirements of the Fair Labor Standards Act is confusing at best and may be subject to misinterpretation by employers.

Fiscal/Economic Impact

(a) Department None.

Budgetary:

Revenue:

Comments:

(b) State None.

Budgetary:

Revenue:

Comments:

(c) Local Government None.

Comments:

Other State Departments: None.

Any Other Pertinent Information: Those in support of the bill include Meijer Inc., Trinity Health, Michigan Grocery Association, Small Business Association, Trucking Association, Michigan Sales Association, Michigan Retailers, Detroit Regional Chamber of Commerce, Michigan Chamber of Commerce, CSI, Michigan Farm Bureau, Michigan Boating Industry, Spectrum Health, AT & T, Gillette International, Soft Drink Association, Beer & Wine Wholesalers, Michigan Press, Michigan Health and Hospital Association, Association of Foods & Petroleum, Central Transport, ABC Warehouse, Michigan Manufacturers, Michigan Business & Professionals Association, Michigan Movers Association, Michigan Theatre Association, and NFIB.

Opposition includes the SEIU, AFL-CIO, Michigan Nurses Association, AFT of Michigan and UAW.

Administrative Rules Impact: No new or revised administrative rules will be needed.